

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT CHATTANOOGA**

PHILLEATRA GAYLOR (<i>Pro Se</i>),)	
)	
Plaintiff,)	CASE NO. 1:15-CV-185
v.)	(Reeves/Steger)
)	
OWEN SMITH, Circuit Librarian,)	
U.S. Court of Appeals for the Sixth Circuit;)	
CLARENCE MADDOX, Circuit Executive,)	
U.S. Court of Appeals for the Sixth Circuit;)	
MEGAN LYNESS, Federal Property Manager,)	
U.S. General Services Administration; and)	
CLIFFORD L. MOSLEY, Representative,)	
Environmental Health Services,)	
)	
Defendants.)	

**REPLY TO PLAINTIFF’S AMENDED RESPONSE TO SUPPLEMENTAL
MEMORANDUM IN SUPPORT OF MOTION TO DISMISS**

The United States of America, on behalf of Defendants Owen Smith, Circuit Librarian, U.S. Court of Appeals for the Sixth Circuit; Clarence Maddox, Circuit Executive, U.S. Court of Appeals for the Sixth Circuit; and Megan Lyness, Federal Property Manager, U.S. General Services Administration (“GSA”), by and through Nancy Stallard Harr, Acting United States Attorney for the Eastern District of Tennessee tenders this reply to Plaintiff’s amended response to Defendants’ memorandum. (Doc. No. 36).

FACTS

Plaintiff is a former employee of the Sixth Circuit Court of Appeals. Plaintiff filed this pro se complaint claiming that her termination was wrongful. Defendants filed a motion to dismiss and a supplement and Plaintiff responded and then sought and obtained permission to amend. (Docs. No. 34 and 36). This reply addresses only matters in the amended response as per Local Rule 7.1(c).

ARGUMENT

1. Megan Lyness should be dismissed as a named Defendant.

Plaintiff seems to center on injuries caused her in the work place. It appears that all those injuries would be covered under the Federal Employees Compensation Act (“FECA”) 5 U.S.C. § 8102. Since Plaintiff is not a GSA employee, such a claim would not be filed with GSA. In any case, Ms. Lyness would not be a proper Defendant.

There continues to be no set of facts in the complaint, or the response, under which Ms. Lyness in her official capacity as an employee of the GSA could be a proper Defendant in an employment suit, nor are there significant Constitutional issues plead in detail sufficient to survive a motion to dismiss for qualified immunity or otherwise.

2. The termination of Plaintiff was not treated under the EDR Plan protocol since she did not exercise that option.

As noted in the supplemental brief and the documents attached thereto, as to the removal action Plaintiff did not invoke her rights under the Employment Dispute Resolution Plan (the “Plan”), but rather pursued this under the Sixth Circuit Employee Manual as an Adverse Action. Plaintiff appears to now argue the merits of that decision. Such is not the role of this Court in a judicial employee case. Plaintiff does not dispute that there is no Title VII rights in this case. (Doc. No. 36, Page ID 392, Paragraph III.) She now contends that she can go behind those decisions and seek judicial review of the process, but cites no authority for that conclusion. She cites numerous disagreements with the facts and handling of the process, which the Defendants are prepared to rebut should that become at issue, but Defendants contend that at this juncture there simply is no judicial review available, and that ends the inquiry. See, *See Spidle v. Hogan*, No. 3:12-0983, pages 2-3 (Middle District, Tenn. 2014).

There are no personal allegations (as would require a pleading of qualified immunity), and in

the official realm the process under the EDR and grievance procedure is not subject to judicial review.

CONCLUSION

Both Mr. Mosley and Ms. Lyness should be dismissed as they are not proper parties. The Court lacks subject matter jurisdiction over the remaining claims, the claims should be against the employer, and they should likewise be dismissed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on January 7, 2016, a copy of the foregoing Reply was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. All other parties will be served by U.S. Mail. Parties may access this filing through the Court's electronic filing system. Specifically, this document was sent to Plaintiff via First Class Mail, complete with adequate postage, addressed to:

Philleatra Gaylor, Pro Se
740 Lakeview Avenue, NE
Atlanta, GA 30308

/s/M. Kent Anderson
M. Kent Anderson
Assistant United States Attorney